Courts
3 of
1862

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(Courts)

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Courts 3 of 1862 pp 354.

File no 3

No. 1862

Establishment of a Small Cause Court at Bangalore.

Endorsed

there may be one or two – I should prefer him to a 3rd rate Madras Barrister.
If I am correct in assigning 500 as a limit to the Courts powers & in determining that an appeal if permitted shall only lie to the Jud. Comr & that from not as a matter of right but on the orders of that Officer a special & technical ground, it follows that all suits above 500 must go to the Dep.y Sup.t. This may seem at first sight somewhat derogatory to the authority & influence of the Small Cause Court Judges, but it must be borne in mind that the decisions of the latter are final, whereas those of the District Officer will be subject to appeal in regular course to the Sup.t. Although, therefore a money limit may be deemed an unsatisfactory basis, it is clear that

Sup.t

Reply that before sending up to the Jud. Comr's scheme for the establ.t of a Small Cause Court in the Bangalore Cantonment I wish to offer certain observations.

I have no doubt of the benefits which will result from the establishment of a Court of this description, and that the increasing wealth of the Cantonment renders it advisable to secure the prompt & efficient disposal of money transactions

It appears to me however that with reference to the different footing on which the Petted Lands & it is not desirable to place it under the same jurisdiction. It has already an efficient Court provided under the revised scheme for the Civil & Criminal its dealings are for the most part on different nature, and the proposed measure would, I fear, be distasteful to the people. I consider

that the limits of the Cantonment should also be the limits of the Small Cause Court. If that restricted boundary is assigned I do not see any reason why the limit of amount fixed by Act IX of 1850, viz 500 as the maximum within which suits are triable by the Summary jurisdiction of the Small Cause Court should not be the same as in Appeal should lie [illegible] from the decision of the Court except on special grounds by the Decision of the Highest Court of the Judicature, that is, I cannot see any valid reason for fixing the limit so high as 1000. But there is a further disadvantage in giving such vast summary powers, and that is that it is very improbable that a first class Lawyer will ever be attainable for 1000. Such pay would not suffice for a Barrister in good practice, and again it must be remembered that the Bangalore Cantonment is after all a Standing Camp which the population, though large, consists for the most part of Camp followers, the trading community probably not exceeding 20,000 or 30,000 at most. In the case of Fort Lake Petta, Nundidroog & Bacca it was found difficult to obtain Small Cause Court Judges on 700 with an Estate (exclusive of Interpreter) on 300. I fail to see what object is gained by introducing at the outset costly Courts with heavy establishments. I do not like any exception however to 1000 being fixed as the pay of the 1st Judge; and shall be ready to support this recommendation in addressing the Govt. If there is any Junior Officer in the Cons specially qualified for the duty - and I believe

appeal should lie, in any case where the J.C. may think fit to admit it for special reasons of this Court. There would be an obvious inconvenience in trying down the Supt to Head Quarters, and special appeals in technical points should not, I think, lie to him, but only to the head of the Judl Dept.

I agree as to paras: 13. 14, and I think that the scale of fees proposed in para: 15 is appropriate; & concur also as to the forms to be adopted (para 16). I have above adverted to the pay of the Judges. The Govt has, in the Original scheme of revision, fixed the rates at 700 & 600 for the first and second Judges respectively. In Bengal the rates vary from 1500 to 1000 & 700, but I should be ready to support the proposition to assign 1000 to the 1st Judge as an adequate remuneration

I do not think it indispensable to insist upon the Chief Clerk possessing the qualification adopted & in para: 18. This is an English view of the case, but it has more weight in the instance of Presidency Towns with a large European population. It is very certain that in Bengal no such intimate knowledge of Law as is deemed to have been found requisite. Would entitle 300 rupees pay for such a post. The Estabt proposed (abstractedly in the Madras model though reduced) appears to me greatly in excess of what is required, but this can be more easily discussed on reference to Calcutta.

† I am disposed to think that, with advertence to this latter point and to the peculiar tenure on which house property in the Cantonment is held, suits involving real property should not be

D 18/10/62

8 cognizable by the Small Cause Court, but by the ordinary Courts of the District. There is actually a ruling of the Supreme Court in Calcutta that suits regarding real property are cognizable by Small Cause Courts; but, in addition to the terms used in the Act being somewhat ambiguous on this point it must be remembered that the letter of the Act was not framed to make it necessarily applicable to Bengal

While there are political reasons for ~~returning to~~ restricting the jurisdiction of the Court to suits affecting personal property

D

Bengal restricted as to value the powers proposed to be assigned to the Small Cause Court Judges are in reality most formidable

With reference to Rs 1000, I feel sure that the Madras scale cannot be regarded as a satisfactory guide. In the Mofussil Courts in Bengal would be much more reliable; and if necessary can be subsequently increased

I agree with the Judge para: 6-7 Court that the existing Courts should be retained - indeed the recent order of Govt in a great measure provide for this

I concur in the view taken that the provisions of Act XII of 1880 should be acted up to, modification being made if any paras: strict to the Judge Law may seem inappropriate to the circumstances of Bengal as being Foreign Territory ‡.

In regard to appeals I have noted my view of the powers which should be conferred on the Small Cause Court Judges, i.e that the

1862. No. 111

From The Judl. Commr.
in Mysore
To The Secretary to the
Commissr. of Mysore

Dated 3d September

Despatched

Received 4th ..

Enclosures, No. 3

No. 207

Subject.

Submission for consideration certain propositions on the subject of the Establishment of a Court of Small Causes in Bangalore.

Orders.

Acknowledge & say that the subject will receive early consideration

D 5/9/62

No. 207

Mysore Ind.l Commissr.s Office

From

C. B. Saunders Esquire

Ind.l Commissioner

Mysore

To

The Secretary

to the Commissioners

in Mysore

Dated Bangalore the 3d. September

1862

Sir, With reference to my letter No. 206 of this days date, forwarding an application from Mr. Page to be permitted to retire upon a Superannuation pension, I have the honor to request that the Commissioners will be good enough to take into his consideration the Subject of a Small Cause Court for the Cantonment of Bangalore, which I would propose to Establish as soon as Govt. Sanction is obtained to carry out the Same -

2 The rapidly increasing trade and population of Bangalore, as well as the wants of a large European Community have for some time past made it apparent that a new Court for Civil Justice

7 Another Tribunal which should also exist simultaneously with the opening of a Court of Small Causes is that which is called a Court of Requests whose jurisdiction lies against Military Defendants in the Bangalore Cantonment for claims ranging upto to Rupees 400.-

8 I think that as there is now a considerable European population in Bangalore there can be no objection to make Act IX† of 1850 applicable to the jurisdiction of the new Court, so far as any such Act can be made applicable to these Territories, and I would recommend that the Court be established in accordance with and on the authority of the said Act, adopting as its guide and course of procedure "Temples practice of Calcutta Court of Small Causes" (copy* of which is herewith forwarded) together with the rules of practice therein laid down /page 233/-

9 The only point in which I should wish to recommend a departure from the strict letter of the Act, is in the matter of Appeals, and this is chiefly on account of the difficulty which is likely to be found in at all times obtaining the services of Judges who

† See page 2 of Book "Bangalore" and with Sanction

* [illegible] Rule requiring confirmation in regard to the power of the under [illegible]

the law in a perfectly satisfactory and efficient manner, but is sure will be willing to hold their appointments for a long continuance, and without looking to obtain speedy promotion to other posts of higher emolument elsewhere - The provisions of the Act contemplate that no appeal should lie from the decision of the Judges, or of any one Judge, of the Small Cause Court, except by writ and legal process from the Supreme Court, but I think as regards Bangalore that in all cases affecting real property appeal should lie in every case, and in all cases of personal property above 500 Rupees -

10 For the present all appeals to be made to the Judicial Commissioners only, but in the event hereafter of there being any Judicial Officer between the District Officer and the highest appellate Court then the appeal to lie with him, and if the decisions of the two Courts are the same no further appeal is to be allowed but if at variance, then to the Judicial Commissioners - As regard to removal property the decision of the Judge or Judges up to 500 Rupees to be final -

11 The object being to afford a

Civil Tribunal for the dispensing of Summary and speedy justice, I think the powers of the Judges in respect of ordinary cases should be large, and appeals against their decisions confined as much as possible to hundred points, the value of which may affect the welfare of the Country and its inhabitants—

12 To provide for the question of appeal it will be necessary to make separate rules at the time of promulgating the notification for opening of the new Court—

13 The only other alterations required to be made in the Act will be to substitute for "Governor in Council" the word "Commissioners", for "Supreme Court" the words "Judicial Commissioners" or such other Officer or Court as may stand in the relation of a Supreme Court to the Bangalore Court of Small Causes—

14 I have dealt therefore with the jurisdiction of the new Court as to area and as to amount—The third point as to jurisdiction over persons, it will be observed that according to the Act the Governor General, the Governors, and Judges are alone exempt from the

suggest that in lieu these words accom-
thereof be substituted Commissioners and
Judicial Commissioners

15 In all other respects as re-
gards legal authority and proceedings
the provisions of Act IX of 1850 may be
made the guide for the Inferior
Court, but in the matter of fees, Sections
XIX and XX provide that the amount shall
be two annas in every Rupee of the a-
mount claimed, and Section XXI provides
that the Governor in Council may lessen
the amount of fees from time to time
as to him shall seem fit. This Scale of
fees may perhaps seem rather high to
commence with, and I would therefore
recommend that the rate be one Anna
in the Rupee, the fee for every Summons
as follows-

Suits not above	Fee for Summons
10 Rupees	" 2 "
20 "	" 4 "
50 "	" 8 "
100 to 500 "	1 " "
500 " 1,000 "	2 " "

and for every warrant one half of the
Sums laid down in Table of fees at page
298 of Appendix in Mr. Knyvett's Book-

If the Commissioners approves of this scale I may suppose, it could be printed for public information in the same form as that above quoted.

16 I would recommend the adoption of the Schedule of authorized legal forms for the use of the Court given at page 242 of the same work, subject only to such modification as the Judges may consider that local peculiarities require.

17 So far I think the new Court may be established for the Town and Cantonment of Bangalore on the basis of Act IX of 1850 and on the Rules of Practice laid down for Calcutta, and that a Proclamation defining the limits of the Court's jurisdiction, shewing the authority for its constitution, the practice, Rules, and Tables, which will form its Guides, and declaring the date upon which it will open, should be printed and published under the authority of the Commissioners in English and Canarese for the information of all concerned.

18 The next question is the composition of the Court as to persons and Establishment. In connection with the powers which they will wield and

I am of opinion that the standard of the Judges should be high, and that for the present their number should be two, the first Judge being always an European — The next most important Officer of the Court Viz.t the Chief Clerk, must also possess, his Executive position requiring not only great ability and an intimate Knowledge of Law, but also much firmness of character and coolness of temperament. The reputation of the Court can hardly depend more upon the justice administered by the Judges than upon the perfect efficiency of the Clerk of the Court — It is of the highest importance therefore that his Salary should be such as would secure the services of a Gentleman of the stamp required —

19 The Salary of the Junior Judge (a native) in Madras is Rupees 1000 and that of Judges of Mofussil Courts of Small Causes in the Madras Presidency is Rupees 1400 — For the Bangalore Court I would recommend that the salary of 1st. Judge should not be less than 1000 Rupees a month, that of the 2d. Judge Rupees 600, and that of the Chief Clerk 400 Rupees a month — Any reasons for considering it highly advisable that the Salary of the

1st Judge should not be less than Rupees 900 and to ensure for the first the selection of the most efficient and able Officer whether in the Commission or a Member of the legal profession, and also in the former case to prevent the probability of constant changes by promotion or otherwise—

2d I beg to forward a Copy of the Establishment of the Court of Small Causes in Madras for comparison with that which I wish to recommend for Bangalore— You will observe that the pay of the Judge and chief Clerk is fully two thirds of the whole amount— Nor is this apparently large sum of Rupees 6000 per mensem an unsmallest burthen to the state, for it may be mentioned as an instance of the working of these Courts that in the year 1861 there were disposed of in Madras Court of Small Causes 22,000 Cases the total Expense to the Government was 73,818 Rupees and the receipts from fees alone was 90,934 Rupees— At the same time it cannot be expected that in the first instance and with a scale of fees reduced one half that the Court in Bangalore will entirely pay its own Expenses—

21 I have the honor to submit herewith a detailed list of the Establish

proposal to request sanction, and have only to add that in drawing it up I have restricted myself as much as possible to such Officers only as appear to me positively necessary to carry on efficiently the business of the Court. I would guard myself however from stating that this Experimental Establishment will not hereafter be found either too small or too large for the business which the Court may be called upon to perform.

22. The population of Bangalore being now 130,000 and the approaching completion of the Railway from Madras rendering it more than probable that this number will largely and rapidly increase, it is to be expected that the work of the Court will be very extensive and laborious, but after mature consideration I think it may safely be commenced in the manner here recommended

23 The number of cases disposed of in the Town and Cantonment of Bangalore for the year ending 30th April 1862 was 3918, the number of Judges was 3 Cantonment Moonsiffs Court, 2 in Town Moonsiffs, and one in N Moonsiffs Court, altogether Six: their aggregate pay being 950 Rupees

24 I beg to forward herewith

a detailed Statement of the Establish
ment of those Courts which I propose
to abolish, discharging them from a certain
date with a gratuity of not less than three
months pay, provided that in the mean
time they are not appointed to other
situations in the Govt. Government,
and I would suggest that a list of any
deserving Servants for whom Employment
may not be found when the changes
take place should be forwarded to
District and other Officers with a
view to their claims being favourably
considered when vacancies occur — As
regards the presiding Officers of the
three Courts, Mr. Page has resigned,
the Town Provisoff bears a very indifferent
character and has already fallen under
constant suspicion of bad conduct, and
either one or other of the two Principal
Siddon Provisoffs may be retained as
a Supernumerary on an allowance of
half pay until a vacancy in the Judicial
Department permits of my appointing
him to some other situation —

25 There remains but one
point for me to bring under the Com-
missioners consideration and that is

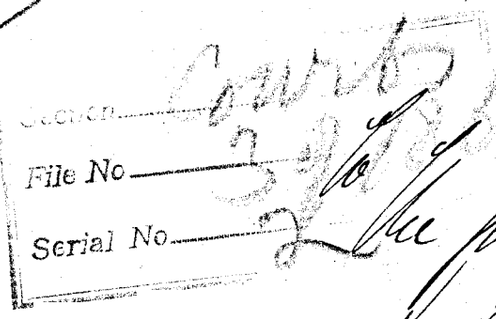
the Salaries herein detailed which I am inclined to think will be of such a moderate nature as to offer no insuperable obstacle to the Sanction of Government.

26 The Amount which will be saved by the abolition of the three Courts now before mentioned is as follows

Contonment Provincial Court since erection of Stationary and Hovel Rent	Rupees 1119-8
Town Provincial Court —"—	343-"
N. S. Provincial Court —"—	630-"
	Total Rupees 2092-8-

The total monthly cost of the Establishment including Salary of Judges, which I propose for Small Cause Court is 3200, from which if I deduct Rupees 500 the Salary of one of the Junior Assistants and the Salary of any Officers now employed who may be recommended as 2d Judge, it will be found that the Expenses of the new Court is already nearly covered, but if it be otherwise and I have to ask the Commissioners Sanction for an increased Expenditure I believe that it will be proved from the income paid by Suitors to the Court Fund, that absolutely but little or no Expenditure

To
The Mysore Commr Office



No 987

The Judl Commr
in Mysore

Sir

I have the honor
by desire of the Comm
acknowledge the
receipt of your Lette
No 207 of the 3rd Inst
and in reply I am
directed to inform
you, that the Judgm
therein referred to
will receive the
Commissioners care
consideration

I have &c

Bangalore
the 7th Jan 1862

D 5/9/62